

BIRMINGHAM CITY COUNCIL

LICENSING SUB-COMMITTEE A 07 SEPTEMBER 2020
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MINUTES OF A MEETING OF THE LICENSING SUB-COMMITTEE A HELD ON MONDAY 07 SEPTEMBER 2020 AT 1000 HOURS AS AN ON-LINE MEETING.

PRESENT: - Councillor Phil Davis in the Chair;

Councillors Sharpe and Bob Beauchamp.

ALSO PRESENT

Bhapinder Nandhra – Licensing Section
Joanne Swampillai – Legal Services
Mandeep Marwaha – Committee Services

(Other officers were also present for web streaming purposes but were not actively participating in the meeting)

NOTICE OF RECORDING/WEBCAST

1/070920 The Chairman advised, and the Committee noted, that this meeting would be webcast for live or subsequent broadcast via the Council's Internet site (www.civico.net/birmingham) and that members of the press/public would record and take photographs except where there are confidential or exempt items.

2/070920 **DECLARATION OF INTERESTS**

Members were reminded that they must declare all relevant and pecuniary and non-pecuniary interests arising from any business to be discussed at this meeting. If a disclosable pecuniary interest is declared a Member must not speak or take part in that agenda item. Any declarations will be recorded in the minutes of the meeting.

APOLOGIES AND NOTIFICATION OF NOMINEE MEMBERS

3/070920 Apologies were submitted on behalf of Councillor Mary Locke and Councillor Mike Sharpe was the nominated Member.

LICESNING ACT 2003 PREMISES LICENCE – VARIATION – HARDY’S AT 50, 50 DADS LANE, MOSELEY, BIRMINGHAM, B13 8PQ

Report of the Interim Assistant Director of Regulation and Enforcement was submitted:-

(See document No. 1)

On Behalf of the Applicant

Sarah Clover – Kings Chambers – Solicitor on behalf of the applicant & Corrigan Lockett

Corrigan Lockett – Licensing Consultant, Lockett & Co

Those Making Representations

Mr & Mrs Hall – Residents

Fiona Tyson – Moore Green Residents Association (Chair)

Alan Seager – Resident

John Attwooll & Anna Martin – Residents

Lisa Pinchbeck & Terry Paiyan – Residents (not present at the Committee)

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The Chairman sought confirmation of attendance as there were a number of attendees at this Committee. Sarah Clover and Mark Lockett confirmed they would be speaking on behalf of the applicant (Ruprai Food and Wines Limited). There were several attendees that made representations (listed above). However, Lisa Pinchbeck and Terry Paiyan were not present. It was noted their submissions still would be considered.

At this stage, the Chairman checked any attendees making representations wanted to withdraw their submissions. There were no submissions withdrawn.

The Chairman introduced the Members and officers present. Following this, the Chairman enquired if there were any preliminary points for the Sub-Committee to consider.

The Chairman then explained the hearing procedure prior to inviting the Licensing Officer, Bhapinder Nandhra to outline the report.

Afterwards, the Chairman invited the applicant to make their submission. At which stage Sarah Clover, made the following points on behalf of the applicant: -

- a) Mr Corrigan Lockett was the Licensing Consultant for the application and was in attendance.
- b) The application was for a major variation of the existing license. There was a license with conditions in place however, the variation would add a different element and style to the premises. It would be in the form of a tap room, wine bar style with a coffee bar and small-scale hot food served.

- c) The unit was adjacent to the existing license however, the unit had been empty for 7 years. The unit was an off license but had not been trading for a long time. The unit belonged to the Ruprai family. They now saw this as an opportunity to take forward.
- d) Ruprai Food and Wines, the applicant, was formed in 1976. This was a longstanding family business and well known, loved element of the community.
- e) Ruprai family had won several awards and were renowned licensees and retailers. They had won the Independent Achievers Academy Award in 2017, 2018 and 2019 for top 100 stores in the Country. They had also won the English Asian Business Award for top convenience store and other awards too.
- f) The designated premises supervisor (DPS) for the current premises was Balbir Singh Ruprai. His son, Hardev Singh Ruprai would like to enhance this enterprise with his wife and run the new element of the family business. It was noted they had a wealth of experience.
- g) Mr Hardev Singh Ruprai had taken a lot of time to research the concept they wanted to instore. He had been to several trade shows and were passionate to support local producers in their area. Local producers such as producers of beer, local brewers, independent brewers, local butchers and other local providers would be a part of their offer.
- h) It was felt the offer was well received and favourable to the market.
- i) A planning application had been made where the premises and was designed by an award winner interior design company based in Stourbridge.
- j) The premises would have glass back cabinets to display products that were for sale. As well as customers being able to consume the products within the premises, they would also have the option to take products away with them in a sealed container to enjoy at home.
- k) She highlighted this would be an upmarket offer and not a pub. It was not designed to be late night or rowdy setting. There was hope that the clientele the premises would attract would be discerning.
- l) It was hoped the premises would provide a focal point for the parade and provide opportunities for employment.
- m) It was designed for families and friends to enjoy in a relaxed and enjoyable environment.
- n) The planning application had been granted in the last 3 weeks to which the number of points raised by resident's were already considered by the Planning Committee. Concerns such as parking, residential amenity, hours, locality etc had already been considered. This was indicator that previous examinations of the evidence by planning did not show anything untoward.
- o) The change in hours were not dramatic and the regulated entertainments were intended to be ambient recorded music to facilitate people's comfort whilst at the premises throughout the week until 11pm. She added Government had set a standard the cut-off time was generally around 11pm. Friday and Saturday's was regarded as weekend, leisure time therefore there was some flexibility for premises of this type. It was not intended not to cause any severe noise or nuisance.
- p) The Environmental Health Departments had no issues with the application. Therefore, on Friday and Saturday, a slight extension for alcohol and regulated entertainment to midnight was sought. The premises would close at midnight. Within the time, the licensee would need to build in the wind down before the closure hour.
- q) Late night refreshment would be sought to cater for the small plate hot food.

- r) There would be an outdoor seating area (small Al-Fresco element), no regulated entertainment and an earlier closure of 2130 hours Sunday – Thursday and 2200 hours Friday – Saturday. Sarah set the context by stating, the Government recently introduced the Business and Planning app, where the deregulation of pavement license, outdoor seating licenses, the 11pm was deemed to be an appropriate cut-off time.
- s) The Police were content and appendix 8 (page 41) of the pack, the conditions had been agreed with West Midlands Police. The Police do not have any concerns about the application, subject to the conditions they had suggested which were all agreed. These could be added to the license without any difficulties. In the Section 182 guidance, paragraph 9.12, the Police were to be regarded as the primary source of advice on issues crime and disorder, antisocial behaviour.
- t) There were some concerns indicated from the resident's objections on drugs, antisocial behaviour or people's behaviour in the locality, the police do not share those concerns. These issues had been looked at in two instances by Planning and the Police.
- u) One element of the application was to remove two mandatory conditions. The existing section in the old license had called itself 'mandatory conditions' on page 45 (the first two) were not mandatory conditions. These were conditions that had been imposed upon the license at some stage. The conditions related to:-

- Restriction on hours and no consumption of alcohol on the premises.

Both were incompatible with the application that was placed forward.

- v) Sarah referred to some of the residents' concerns/ objections:
 - Parking, deliveries, bicycles storage, bin storage, wine bar not fitting the character of the parade, these were planning issues and had been looked at recently and found acceptable in the planning context.
 - Late night noise, public nuisance disturbance – a number of representations had indicated there were flats above the licensed premises, however, there were no objections submitted from the people living in the flats.
 - The objections that had been submitted were from people who lived away from the premises.
- w) The applicant had a clear concept and the Police and Environmental Health had no issues. If there were any issues in the future, this could always come back to the Committee to review however, there would have to be evidence to support the concerns.
- x) Covid-19 Pandemic – In April 2020, a letter was received by the Minister of Home Office, Kip Malthouse exulting a more flexible approach to licensing during the pandemic. Hospitality and retail businesses had suffered during the crisis. It was felt a family such as the Ruprai family had been well established and deserve some support try to embark on a new venture for the local economy.

In answer to Members questions Sarah Clover made the following points: -

- The term covered and sealed meant a bottle or receptacle for alcohol that was not opened. The idea was to have a display of bottle, beers at the premises with the option for customers to take sealed items home. The Police do not want people to

be wonder outside the redline of the premises with an open receptible in the area. This was to avoid litter in the area. Sealed items would leave the premises possibly in a paper bag to take home.

- Off license element of the business – Mr Lockett added he was not able to give the percentage of how much the off-license activity would be and had not been involved in the business planning and the turnovers.

The Chairman stressed that the objections and petition submitted had been read by Members. He asked the representatives if there were additional comments to the written submissions.

Representations;

1) Fiona Tyson, on behalf of Moor Green Residents Association (Chair), made the following points: -

- a) There were a few concerns raised by residents which were in addition to those shared in the pack at page 16.
- b) She referred to Miss Clover's comments regarding the planning permission that had been granted for the change of use but did not mention the conditions that were placed on that planning permission.
- c) She referred to the planning permission conditions: There were 4 conditions that were referred to and should be related to licensing.
 - Planning Committee – the hours of opening should be limited from mid-day to 11pm every day. The request to Licensing Committee was to open from 9am – 11pm (weekdays) / mid-night (weekends). There was a difference between what was placed forward to Planning and Licensing Committees.
 - Planning Committee – placed a condition to limit the use of outside seating area from mid-day to 9pm everyday and the hours were at variance to those requested from the Licensing Committee.
 - Planning Committee mentioned tables and chairs should be removed from the seating area by 9pm every day and this was not mentioned in the correspondence from the applicant to the Licensing Committee. Storage would be a concern, as to how the tables and chairs be carried through the premises where people would be having their meal which would raise safety concerns.
 - Planning Committee mentioned any live or recorded music, speech or sound should be prohibited other than background music which would need to be in-audible outside the premises. The speakers and subwoofers had been removed from the plans however, it was important the area was quiet because of people who live above or nearby the premises.
- d) Miss Clover mentioned the establishment Ruprai's were well known and people in the area were fond of. Majority of the residents were pleased the unit/ shop would be brought back to use. Miss Clover mentioned they would ensure the correct clientele were attracted and Ms Tyson was unsure how they would 'ensure' the right people were attracted.
- e) In addition, how could the premises 'ensure' that bottles and cans were not drunk on the forecourt of the premises. The Co-op nearby, people buy their drinks and stand outside drinking. Only a drinking order would prevent this like in Moseley Village.

- f) She queried if the proposal covered the full range of off-licenses; bottles, gins, tonics, mixers, wines? Or was it intending to sell a few interesting beers and wines which were on sale for drinking and same beverages for people to buy.
 - g) Miss Clover mentioned food and hot drink, it was clear from the Planning Committee the suggested food served would be pizzas and dough balls therefore this would mainly help the local cheese makers.
- 2) Mr John Attwooll and Anna Martin, Residents, made the following points: -
- a) It was noted Mr Attwooll and Miss Martin lived directly opposite the establishment concerned.
 - b) They agreed with the points indicated by Fiona Tyson in relation to the contradictions with the Planning application which did not match what had been agreed by Planning Committee.
 - c) His main concerns were related to public nuisance, crime and protecting children from harm.
 - d) He mentioned it was a quiet residential area which begins to get quieter around 8pm. He was now concerned about the people who would be leaving late from the premises intoxicated or shouting in the area.
 - e) He felt this could lead to violence and disagreements outside their properties and even whilst waiting for taxis'.
 - f) He welcomed the unit, premises being in use and bringing employment to the area however, it was felt there could be other ways of increasing employment to the area than a late-night bar.

The Chairman sought confirmation if Mr Attwooll would be speaking on behalf of Miss Martin too. Mr Attwooll confirmed that was correct.

- 3) Mr Alan Seager, Resident, made the following points:-

- a) He referred to Miss Clover's comments on residents who lived above the premises. Sue Barker who lived 52 Dad's Lane was a strong objector and had submitted a petition to the Council within excess of 50 names on it. The Chairman confirmed this had been seen by Members.
- b) The forecourt consisting of a row of six shops had been used as pedestrian use for 95 years to service the local residential area; mainly the Pineapple Estate. No vehicle or traffic was permitted on this parade with bollards in place to stop traffic. Most of the bollards were removed to accommodate the control pedestrian crossing immediately outside the parade. The lights were installed as a result of speeding traffic on Dad's Lane and parking bays that serviced the shops. The zig zag lines further reduced the legal parking outside the parade. It was felt the additional long-term parking more than one hour by customers using the proposed wine bar would add to the danger of speeding on Dad's Lane and put pedestrian and people at risk.
- c) The proposed construction of low the wall and levelling of the forecourt of the premises would endanger pedestrian use; common access across the forecourt particularly to the elderly and disabled pedestrians with limited eyesight.
- d) The provision of a drinking area on the forecourt with open local access exposed children and young persons to increased harm for alcohol. Only CCTV cameras were in place to provide protection. The forecourt was on

route for children going to the local junior and infant school on Moor Green Lane which is around 300 yards away.

- e) The area had exchanges of drugs particularly in the evenings. With alcohol consumption this would aggravate the situation which could result in crime and disorder.
- f) Policing would be difficult in the area and this would aggravate the level of public nuisance and litter which currently existed.
- g) The parade was not in the Council's development area. Local communities were already well served with access to drinking establishments within Moseley Village (0.6 mile), Kings Heath (0.5 mile) and Pershore Road (0.5 miles). There were several public houses within the area like the Highbury.
- h) He felt the parade was a shopping area and not an entertainment area which was what it would become if the proposal went ahead.
- i) The applicant had owned this property for over 10 years, and in that time it has become unsightly without any attempt.

At this juncture, it was noted Mr Philip Hall had to leave the meeting due to medical appointment. Mrs Hall was listening to the Committee meeting however, did not have access to any controls to make comment.

Additional comments made by Members of the Committee;

- It was noted there was planning permission granted prior to meeting with the Licensing Committee which should be in tandem with each other but not directly affected by one or the other.
- A separate decision must be made on the licensing matters which was separate to planning.

The Chairman asked the representations (objectors) in attendance if there were any closing submissions.

- Fiona Tyson – she was still unclear of the standing of the Planning Committee conditions and their relevance to the hours if agreed by the Licensing Committee. It felt that there were two different sets of times the establishment may be open. There was a need for clarity for the shorter times agreed by the conditions on the Planning application, or the longer times requested of the Licensing Committee.
- John Attwooll – People in the area, and opposite are objecting against the proposals.
- Alan Seager – Policing report – Due to the shortage nationally as well as local the Police were not in a position to judge what was happening in the area. Matters have been reported to the Police and it was a high crime area in respect of nuisance, shop lifting and litter.

In summing up, Sarah Clover on behalf made the following points on behalf of the applicant: -

- Reference was made to the relationship of the Planning and Licensing decisions. The most restrictive authorisation applies. The Planning permission would control these premises to the hours that the planning Committee had granted. It would be 11pm, the outdoor area would be the earlier time and the 4 conditions set out would apply. That does not mean the license application had to be in lined with the planning conditions.

These applications were submitted at similar times and the applicant was now looking for a more extensive offer. The decisions made by Licensing Committee would be pegged to the Planning application however, a modest change in hours could be submitted. It was noted, rather than going back to undergo two authorisations (licensing and planning), the planning application could be amended. The restrictions protect the local people and there was no need to replicate them onto the license.

- The section 182 guidance guards against duplicating other regulatory regimes. No need to duplicate from one regime to another.
- The longer application had been submitted as the police were content with this. There were no issues with breaches of the licensing objectives related to the application.
- Noise, taxi's etc – this was an area with licensed areas. There was a pub close by and that did not appear to be problematic demographically. It was felt speculation of what might happen in the future should not be made and this should be up for review rather than predicting what may/ may not happen.
- She added the design of the offer could only be put forward to be attractive to the area. The family had undertaken research and market testing to see what would be appealing to the area. That gave a baseline of whom you would expect to use the services. These points had already been considered with planning and now explored with licensing.
- There was no risk to children where consumables were on offer. The off-license element was available by the Ruprai Wines and the Co-op.
- The Ruprai's were very experienced licensees and the Designated Premises Supervisor was of longstanding with a track record that was tested. Therefore, there was no risk to children and the application was well-presented.

The Chairman referred to the comment on the range of drinks that would be sold at the premises. Sarah added the nature of the offer was a tap room, wine bar style. The glass displays would have the beverages that would be available for customers to take home. This was a variation application with the redline of an off-license.

At this stage the meeting was adjourned in order for the Sub Committee to make a decision and all parties left the meeting. The Members, Committee Lawyer and Committee Manager conducted the deliberations in private and decision of the Sub-Committee was sent out to all parties as follows: -

4/070920

RESOLVED:-

That the application by Ruprai Food and Wines Limited to vary the premises licence in respect of Hardy's at 50, 50 Dads Lane, Moseley, Birmingham, B13 8PQ under section 34 of the Licensing Act 2003 **BE GRANTED** with the addition of those conditions agreed with West Midlands Police in advance of the meeting, namely:

- There will no food or drink allowed in the outside area from 21.30hrs Sunday & Thursday, and 22.00hrs on Friday & Saturday
- CCTV will display the correct time and date stamp
- Any off sales for consumption outside the licensable area shown on the premises plan will be sold in sealed containers only

- The Refusals & Incident Logs will be signed off weekly by the premises licence holder or their nominated person
- A copy of the training records regarding staff responsibility around the Licensing Act 2003 will be kept on site. All staff, with the exception of personal licence holders, will have this documented training prior to their first shift on duty while the premises is carrying out licensable activity
- No children under the age of 18 allowed on the premises without a responsible adult
- Challenge 25 signage will be displayed prominently on the entrance door and bar service area
- The premises will risk-assess the need to deploy door staff on an ongoing basis
- If door staff are deployed at the premises, then they will sign on and off duty. The premises will keep a profile of all door staff, which will include a copy of their SIA badge and photographic ID. If photographic ID is not available then a utility bill no less than 3 months old will be acceptable. This profile will be kept for 3 months and made available to any of the responsible authorities on request
- If the premises is hired out in its entirety by a third party or an outside promoter is used then the premises will notify West Midlands Police central licensing team, by email, a minimum of 21 days prior to the event. This notification will be supplied with a full written risk assessment for that event. The risk assessment is to be agreed with West Midlands Police central licensing team, who will retain the power of veto over that event if they believe any of the licensing objectives will be compromised

The Sub-Committee deliberated the operating schedule put forward by the applicant and the likely impact of the application, including the agreed conditions, and concluded that by granting this application, the four licensing objectives contained in the Act will be properly promoted. The applicant had over 40 years' previous experience of running licensed premises as a long-standing family business, was well known in the area, and indeed had won some trade awards.

The intention was that the premises, which originally had been an off-licence shop, would become a tap room and wine bar (rather than a public house the intention was to attract an 'upmarket' clientele). Planning permission had been granted, and therefore various aspects which might have created problems had already been dealt with via the planning regime – such as parking, deliveries and whether the application suited the character of the area.

The Sub-Committee carefully considered the written representations made by other persons, several of whom also attended the meeting and addressed the Sub-Committee directly. However, the Members were not convinced that there was an evidential and causal link between the issues raised and the effect on the licensing objectives. The objections seemed to focus on the potential for noise caused by patrons, and the potential for an increase in crime, but the style of operation and the conditions agreed with Police covered this. The applicant had been part of the local community for a considerable period. There was no reason to believe that the premises would not be properly managed, and so the Sub-Committee resolved to grant the application with the agreed conditions.

In reaching this decision, the Sub-Committee has given due consideration to the City Council's Statement of Licensing Policy, the Guidance issued under Section 182 of the Licensing Act 2003 by the Secretary of State, the application for a premises licence, the written representations received and the submissions made at the hearing by the applicant's legal representative and by those making representations.

Licensing Sub-Committee A – 07 September 2020

All parties are reminded that under the provisions contained within Schedule 5 to the Licensing Act 2003, there is the right of appeal against the decision of the Licensing Authority to the Magistrates' Court, such an appeal to be made within twenty-one days of the date of notification of the decision.

Please note, the meeting ended at 1152.